Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

United States Supreme Court

October Term, 1997

T. CARLTON RICHARDSON,
Petitioner,

vs.

DISTRICT OF COLUMBIA COURT OF APPEALS, et al.
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
to the
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI AND APPENDIX

T. CARLTON RICHARDSON
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36 pp

QUESTION FOR REVIEW

I.

Whether an action for civil rights violations brought in federal district court under 28 U.S.C. Sec. 1331 (federal question jurisdiction) and Sec. 1343 (civil rights jurisdiction) for deprivation of appellant's license to practice law under the Due Process Clause of the Fifth Amendment of the U.S. Constitution and 42 U.S.C. Sec. 1983 resulting from disciplinary enforcement activities of the D. C. Court of Appeals can be prosecuted only by appeal to the U.S. Supreme Court under 28 U.S.C. Sec. 1257 (certiorari jurisdiction to review final judgments of state courts)?

LIST OF PARTIES

Involved in these certiorari proceedings are the following parties:

Petitioner

T. Cartlon Richardson

Respondents

District of Columbia Court of Appeals (DCCA)
Board on Professional Responsibility, DCCA
Leonard Becker (Bar Counsel, DCCA)
Donna M. DeSilva (Assistant Bar Counsel, DCCA)

TABLE OF CONTENTS

	Page
Question for Review	i
List of Parties	ii
Table of Contents	iii
Table of Authorities	v
Decision for Review	1
Jurisdictional Statement	1
Statutory Provisions Involved	2
Statement of Case	5
I. Introduction	5
II. Background	5
III. Judicial Proceedings	7
A. Before Lower Federal Courts	7
B. Sources of Original Federal Jurisdiction	7
Reasons for Writ	8
I. Introduction	8
II. Application of Writ Review Standards	10
A. To Compel the Proper Exercise of Federal Court Jurisdiction in a Civil Rights Action	10
B. To Resolve Conflicts Among the Appeals Courts and this Court's Decisions Which Allow or Disallow Civil Rights Actions to Remedy Unconstitutional Results in Bar Disciplinary Proceedings	14
III. Conclusion and Relief Requested	15

APPENDIX

Table of Contents..... i
Relevant Decisions..... 1
Other Documents..... 7

PUBLISHER'S NOTE:

THE FOLLOWING PAGE WAS UNAVAILABLE FOR FILMING:

V

Forrester v. White—12, 14
484 U.S. 219, 108 S.Ct. 538 (1988)

Garrity v. New Jersey—10
385 U.S. 493, 87 S.Ct. 616 (1967)
Gerstein v. Pugh—14
420 U.S. 103, 95 S.Ct. 854 (1975)
Gilbert v. Homar—9
___ U.S. ___, 117 S.Ct. 1807 (1977)
Goodrich v. Supreme Court of So. Dakota--11, 14
511 F.2d 316 (8th Cir., 1975)

Hanna v. Homes Ins. Co.--11
281 F.2d 298 (5th Cir., 1960)
Harlow v. Fitzgerald—12
457 U.S. 800, 102 S.Ct. 2727 (1982)
Hornsby v. Allen—13
326 F.2d 605 (5th Cir., 1964)
Howell v. State Bar of Texas—11, 14
843 F.2d 205 (5th Cir., 1988)

In re T. Carlton Richardson--6, 10
No. 97-1143, ___ U.S. ___ (02/23/98)

Pulliam v. Allen—12
466 U.S. 522, 104 S.Ct. 1970 (1970)

Richardson v. D.C. Court of Appeals—6
___ U.S.___, 116 S.Ct. 517, 133 L.Ed.2d 425 (1995)
Richardson v. D.C. Court of Appeals—7, 9, 11
83 F.3d 1513 (D.C. Cir., 1996)

Supreme Court of Virginia v. Consumers Union—12, 14, 15
446 U.S. 719, 100 S.Ct. 1967 (1980)

Young v. Harper—9
___ U.S. ___, 117 S.Ct. 1148 (1997)

DECISION FOR REVIEW

For review is presented an order granting "summary affirmance ... substantially for the reasons stated by the district court" in T. Carlton Richardson v. D.C. Court of Appeals, et. al, No. 97-7085 rendered on December 9, 1997 setout in the Appendix at 1.

JURISDICTIONAL STATEMENT

Jurisdiction of the U.S. Supreme Court to review a final judgment or order in a civil case before a federal appeals court is by grant of a timely filed petition for writ of certiorari. See, 28 U.S.C. Sec. 1254(a). A petition for writ of certiorari must be filed within 90 days of the entry of the appeals court judgment or order sought to be reviewed, or, if timely filed, the disposition of a petition for rehearing, whichever is greater. See, S.Ct.R. 13(1) and 13(3)

Petitioner files this Petition for Writ of Certiorari within 90 days of the entry of a final order granting summary affirmance entered by the in Richardson v. D.C. Court of Appeals, supra, on December 9, 1997, the deadline being March 9, 1998. Jurisdiction of this Court has been properly invoked to consider a review of the final appeals court decision in that civil rights case.

STATUTORY PROVISIONS INVOLVED
(Constitution, Statutes, Rules/Regulations)

Relevant portions of the following statutory provisions are involved in this case:

U.S. Const., Art. III, Sec. 2

> ... The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States ...
>
> In all Cases ... in which a State shall be Party, the supreme Court shall have original jurisdiction. In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

U.S. Const., Art. IV, Sec. 2.

> ... The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens of the several States.

U.S. Const., 5th Amd.

> No person shall ... be deprived of ... property, without due process of law; ...

28 U.S.C. Sec. 1257(a)
(State courts; certiorari)

> Final judgments ... rendered by the highest court of a State in which a

decision could be had, may be reivewed by the Surpeme Court by writ of certiorari ...where any ... right, privilege, or immunity is specially set up or claimed under the Constitution or the ... statutes of ... the United States.

28 U.S.C. Sec. 1331
(Federal question)

The district court shall have original jurisdiction of all civil actions arising under the Constitution, laws, ... of the United States.

28 U.S.C. Sec. 1343
(Civil rights and elective franchise)

(a) the district courts shall have original jurisdictin of any civil action authorized by law to be commenced by any person: ***

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usuage, of any right, privilege or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights ...

(b) For purposes of this section *** any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District

of Columbia.

42 U.S.C. Sec. 1983
(Civil action for deprivation of rights)

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ..., subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF CASE

I. Introduction

These certiorari proceedings arise out of the summary affirmance by the U.S. Court of Appeals on grounds of lack of jurisdiction of a federal district court dismissal of petitioner's civil rights complaint against the D.C. Court of Appeals and its bar enforcement officials for alleged violations of petitioner's due process rights which resulted in the suspension of his license to practice law on several occasions by the respondent DCCA. The appeals court concluded that petitioner's only recourse for enforcement of his civil rights since final disciplinary orders of a court was involved was by writ of certiorari to this Court and not by an original action in the federal district court under the civil rights laws. Appx. 1

Raised here is an important question of federal jurisdiction in civil rights cases involving attorneys access to the federal courts for alleged civil rights violations by the courts that regulate them. Moreover, a majority of the federal courts which have considered this question and the general issue of the immunity of courts from the operation of federal civil rights laws have allowed such suits to be maintained, however, the appeals court in this case has not thereby creating a conflict and confusion in the civil rights jurisprudence involving an attorney's right to claim civil rights violations when a court regulates the practice of law.

II. Background

Petitioner was licensed to practice law in the District of Columbia by the respondent D.C. Court of Appeals (DCCA) in 1974, a court created by Congress under Article III of the Constitution and given exclusive authority to regulate the practice of law

in D.C. See, D.C. Code Sec. 11-2501 et seq. In a civil rights complaint filed in the U.S. District Court for the D.C. the petitioner alleged that on at various times on five (5) occasions between 1991 and 1996 the respondent DCCA imposed automatic interim suspension without a presuspension or a prompt postsuspension hearing pending the final disposition. Appx. 8 at para 5. Final disposition was also conducted without an evidentiary hearing on reciprocal disciplinary charges under its disciplinary procedures. During the investigatory phase by the respondent's Bar Counsel who prosecutes disciplinary actions and in the adjudicatory phase before the respondent's Board on Professional Responsibility which makes a report and recommendation regarding reciprocal disciplinary charges petitioner opposed any disciplinary action based upon any foreign misconduct raising continuously the due process constitutional objections.

Without an evidentiary hearing in any of petitioner's reciprocal disciplinary cases, the respondent in all but one instance, imposed final reciprocal discipline of suspension for the alleged misconduct. Each time that the petitioner sought review by petition for writ of certiorari in this Court the petition was denied. See, Richardson v. D.C. Court of Appeals, ___ U.S. ___, 116 S.Ct. 517, 133 L.Ed.2d 425 (1995); In re T. Carlton Richardson, No. 97-1143, ___ U.S.___ (02/23/98).

While accepting the result of the suspensions as a "done deal", the petitioner still questioned the unconstitutional manner in which the suspensions, interim and final, were imposed. That prompted the filing this civil rights action against the respondents, DCCA and its enforcement officers, by the petitioner.

III. Judicial Proceedings

A. Before Lower Federal Courts.

Upon consideration of a motion to dismiss by the respondents, the federal district court granted the motion on grounds that the petitioner's sole relief for civil rights violations "on Constitutional grounds" was before this Court by petition for writ of certiorari based upon Richardson v. D.C. Court of Appeals, 83 F.3d 1513 (D.C.Cir., 1996) and D.C. Court of Appeals v. Feldman, 460 U.S. 462, 203 S.Ct. 1303 (1983). See, Appx. 3. This dismissal by the district court was summarily affirmed on appeal based upon the same reasoning and authorities. Appx. 1.

B. Sources of Original Federal Jurisdiction

Federal statutes which provide original jurisdiction in the district court in civil rights actions are: 28 U.S.C. Sec. 1331 giving

> original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States,

42 U.S.C. Sec. 1343(a)(3) giving jurisdiction for deprivation of civil rights and Sec. 1343(a)(4) allowing for recovery of damages or injunctive relief under congressional civil rights acts; 42 U.S.C. Sec. 1983 giving jurisdiction for deprivation of rights by "(a)ny person ... under color of" state law, custom or usage; and 42 U.S.C. Sec. 1988 giving jurisdiction for proceedings in vindication of civil rights and allowing the award of attorney fees.

REASONS FOR WRIT

I. Introduction

This case involves an important question regarding federal court jurisdiction in civil rights cases and the right of an attorney to claim the protection of the civil rights provisions under the Privilege and Immunities Clause of Article IV, Sec. 2 of the Constitution and the congressional civil rights laws where there is alleged unconstitutional behavior on the part of a state court and its operatives charged with the regulation of the practice of law which has deprived the attorney of his license to practice law. Federal courts exist primarily for the purpose of resolving cases and controversies involving the determination, protection, preservation, and vindication of the rights, privileges and immunities arising under or secured by the Constitution and laws of the United States.

Where, as here, a federal district court refuses to exercise its jurisdiction "under such Regulations as the Congress shall make" (Art. III, Sec. 2) and that refusal is in conflict with decisions of other federal appeal courts, as well as this Court on the subject of these proceedings or brings confusion to the jurisprudence involving a deprivation of a license to practice law in violation of state-based and federal constitutional due process rights, it is the province of the writ of certiorari to compel compliance by the federal court where there is shown to be the wrongful withholding of the exercise of jurisdiction by a federal district court in a civil rights action and to resolve conflicting interpretations regarding the circumstances under which a state court is immune from the application of the civil rights laws to its unconstitutional activities as a regulator of the practice of law.

Before the court for review is a summary affirmance order of the U.S. Court of Appeals for the D.C. Circuit of the dismissal of a civil rights action brought by petitioner, a D.C. Bar member, for deprivation on several occasions of his license to practice law by the respondent DCCA in violation of the petitioner's due process rights secured under the laws of the District of Columbia [see, D.C. Code Sec. 11-2503(b)], federal civil rights statutes [42 U.S.C. Sec. 1983] and the Fifth Amendment of the U.S. Constitution. Summary affirmance was based principally on the grounds that the exclusive remedy in a civil rights action of this nature is to petition this Court for a writ of certiorari under 28 U.S.C. Sec. 1257 and not as an original action brought in the federal district court under 28 U.S.C. Sec. 1331 conferring federal question jurisdiction or Sec. 1343 conferring civil rights question jurisdiction. These district and appeals courts relied upon the decision of this Court in Feldman and the appeals court decision in Richardson v. D. C. Court of Appeals, supra, with based upon Feldman.

This Court has struck down state regulations which deprived a paroled murderer, a race horse jockey, a public or private police officer, to name just a few, of a valuable property interest without a predeprivation or prompt postdeprivation hearing. See, e.g. Young v. Harper, ___ U.S.___, 117 S.Ct. 1148 (Thomas, J., 03/18/97) [Murderer's right to parole revocation hearing.]; Barry v. Barchi, 433 U.S. 55, 99 S.Ct. 2642 (1979) [Race horse jockey.]; Davis v. Scherer, 468 U.S. 183, 104 S.Ct. 3012 (1984) [Highway patrol officer]; Gilbert v. Homar, ___ U.S. ___, 117 S.Ct. 1807 (1997) [University security officer.] However, there seems to be an exception being made in the case of attorneys when seeking the vindication of an unconstitutional deprivation of a license to practice law by a judicial regulator, as in this case. It was a Justice Douglas writing for a majority of this

Court in Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616 (1967) that once exclaimed that an attorney is "not relegated to a watered-down version of constitutional rights". If that be the case then grant of a writ of certiorari is surely the appropriate remedy in this case.

II. Application of Writ Review Standards

A. To Compel the Proper Exercise of Federal Court Jurisdiction in a Civil Rights Action

In this case, summary affirmance was based upon the erroneous assumption that the petitioner was seeking in his civil rights complaint to modify or vacate several disciplinary suspension orders of the respondent DCCA. See, Complaint, Appx. 7. The disciplinary orders challenged here have been entered and the petitioner has served the time, or in some cases excess suspension time even without a finding of reciprocal misconduct in the final analysis, except in one case in which a final suspension order was entered without a hearing while this case was pending before the appeals court. See, In re T. Carlton Richardson, No. 97-1143, ___ U.S.___ (02/23/98) [Denying cert.]

Petitioner's complaint merely posited the question: Did the respondent DCCA in imposing the challenged interim and final disciplinary orders of suspension thereby depriving the petitioner of his law license accord the petitioner the process due him under the applicable D.C. statutes [D.C. Code Sec. 11-2503(b)] and the 5th Amendment of the U.S. Constitution and laws governing such civil rights? If not, petitioner in his civil rights complaint demands damages and prospective injunctive relief. See, Bivens v. Six Unknown Named Agents, 403 U.S. 388, 91 S.Ct. 1999 (1971) [Money damages against federal officers for deprivation of civil rights.]

Original jurisdiction of civil rights actions

lie in the federal district courts, not the U.S. Supreme Court. See, 28 U.S.C. Sec. 1331 and Sec. 1343. Under Feldman a federal district court has no jurisdiction to reverse or modify the judgment of a state court which must be reviewed in only this Court unless the alleged errors constitute a deprivation of constitutional rights. Hanna v. Homes Ins. Co., 281 F.2d 298, 303 (5th Cir., 1960); Goodrich v. Supreme Court of So. Dakota, 511 F.2d 316, 317 (8th Cir., 1975) [District court had jurisdiction of attorney's suit alleging that the state's disciplinary procedure did not comport with the attorney's due process rights.]; Howell v. State Bar of Texas, 843 F.2d 205, 206 (5th Cir., 1988); But see, Richardson v. D.C. Court of Appeals, supra [Independent civil rights action challenging the constitutionality of the disciplinary orders on grounds of lack of due process was "inextricably intertwined" with the disciplinary case and therefore federal court jurisdiction is lacking.]

In Howell the appeals court correctly stated the teachings of the Feldman doctrine:

> In Feldman, the [U.S. Supreme] Court held that United States district courts have subject matter jurisdiction over general challenges to State Bar rules promulgated in non-judicial proceedings, but do not have jurisdiction to review State court decisions in specific disciplinary cases even though the bases for the decisions are challenged on constitutional grounds. Id.

Howell's appeals court allowed the district court to determine whether the Texas disciplinary scheme was "unconstitutionally overbroad and vague", a due process violation if proved.

In this case the constitutional due process challenges were to whether the requisite notice was

provided, whether the requisite hearing was provided and whether the applicable D.C. Bar regulation was "vague" presented within the context of a civil rights action. Feldman has no applicability since it was a direct appeal of a disciplinary case, not an independent civil rights action as this case is. If this were an action seeking direct review of a disciplinary case, it would fall within the exception of the Feldman doctrine since a general challenge to the constitutionality of a D.C. Bar regulation is being made.

Civil rights actions against bar enforcement officials are not barred because the alleged unconstitutional conduct arises out of their enforcement activities for the

> very purpose of Sec. 1983 was to interpose the federal courts between the States and the people, as guardian of the people's federal rights -- to protect the people from unconstitutional action be it executive, legislative, or judicial. (Emphasis supplied) Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 735 n. 14, 100 S.Ct. 1967 n. 14 (1980) [Citing Ex parte Virginia, 100 U.S. 339, 25 L.Ed. 676 (1880)]

See also, Butz v. Economou, 438 U.S. 478, 502-503, 98 S.Ct. 2894, 2908-2909 (1978) [Sec. 1983 was enacted by Congress to insure that the federal courts would have jurisdiction of constitutional claims against state officials]. Pulliam v. Allen, 466 U.S. 522, 104 S.Ct. 1970 (1984) [State officials not immune as to state due process claims.]; Forrester v. White, -484 U.S. 219, 108 S.Ct. 538 (1988) [No immunity for courts in employment decisions under Sec. 1983.]; See also, Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738 (1982) [Government officials who abuse their offices have only qualified immunity from civil damages.];

Bivens.

For a civil rights action for deprivation of a professional license founded upon a lack of due process to be actionable, the complaint must setforth (1) that "the plaintiff has been denied a protected right, privilege or immunity," and if 42 U.S.C. Sec. 1983 is a jurisdictional basis, (2) that "defendants acted under color of state or local law." Hornsby v. Allen, 326 F.2d 605, 612 (5th Cir., 1964). Both of the factual allegations were made in the petitioner's complaint. See, Appx. 7-12

When examining a due process based claim in a civil rights case

> (t)he role of the court is to ascertain whether the manner in which this determination was or is made accords with constitutional standards of due process ... Id.

In other words, in this case, the inquiry is into "how" and "what" was done to accomplish the suspensions and if those procedural and substantive procedures comported with state-based or federal constitutional-based due process rights. This determination was all the petitioner sought in his dismissed civil rights action.

To allow the appeals court order to stand would place the petitioner in a Catch-22 position, foreclosed from appellate review by this Court under its certiorari jurisdiction which is "not a matter of right, but of judicial discretion" (S.Ct. R. 10) the petitioner is also foreclosed from prosecuting a civil rights action which is "a matter of right" because the appeals court concludes that the district court lacks jurisdiction concluding that jurisdiction lies in this Court since a state court's disciplinary order is involved. A self-

fulling prophesy if there ever was one. Issuance of the writ of certiorari if only to compel the district court to exercise jurisdiction which it refuses to do in this civil rights action is appropriate.

B. To Resolve Conflicts Among the Appeals Courts and this Court's Decisions Which Allow or Disallow Civil Rights Actions to Remedy Unconstitutional Results in Bar Disciplinary Proceedings.

In his civil rights complaint the petitioner alleges the violation of certain federally protected constitutional and statutory based claims under the bar disciplinary enforcement procedures of the respondent DCCA. The sole purpose of the petitioner's civil rights action was to vindicate the alleged transgressions against his due process rights in the disciplinary proceedings resulting in the wrongful deprivation of his license to practice law. Federal district courts have been allowed to consider such due process challenges by attorneys to bar enforcement procedures whether alleged in an independent civil rights action, by other collateral attacks, or within the disciplinary case itself. Goodrich; Howell See also, Forrester; Gerstein v. Pugh, 420 U.S. 103, 107 n. 9, 95 S.Ct. 854, 860 n. 9 (1975) [In action challenging the legality of a state's pretrial detention law, habeas corpus is not the exclusive remedy and a civil rights action is available.] Unconstitutional action by state judicial officers is actionable under civil rights laws. Supreme Court of Virginia; Forrester.

Against these well settled principles which find their genesis in the 1880 case of Ex parte Virginia and the civil rights laws passed by Congress following the Civil War in 1866 is this appeals court decision summarily affirming the denial of petitioner's federal right to protection from unconstitutional deprivation of his license to practice law at the hands of state judicial officers

and their agents. An unacceptable abdication by these D.C. federal courts of their duty to act "as guardian of [petitioner's] federal rights ... from unconstitutional [judicial] action ...". Supreme Court of Virginia.

Equal justice under law is assured only when there is steadfast adherence to strict procedural safeguards and when every citizen regardless of their profession is accorded equal access to the federal courts to seek protection of the civil rights laws of this nation. This case is therefore writworthy for the purpose of resolving this conflict among the appeals courts inter se and this Court's decisions and to clarity the confusion in the availability of federal civil rights laws to attorneys who challenge the constitutionality of bar regulations and allege unconstitutional actions thereunder by state courts and their agents.

III. Conclusion and Relief Requested

In its bar enforcement activities a state court and its agents are not immune from suit under the civil rights laws for unconstitutional conduct. Jurisdiction of civil rights action resides originally in the federal district courts, not the U.S. Supreme Court, even if a final order of a state court is involved in the unconstitutional conduct for courts conduct their regulatory activities through orders. A writ of certiorari is sought by petitioner in order to compel exercise of existing federal jurisdiction so as not to deprive a citizen who happens to be an attorney from access to the federal court for protection of his federal civil rights and to resolve conflicts among federal appeal courts and this Court and bring order to the confusion that now exists on the issue of whether there is immunity to suit under civil rights laws of state courts acting unconstitutionally in their bar disciplinary enforcement activities.

Relief Requested. For the foregoing reasons, this Court is asked to enter an order granting this Petition for Writ of Certiorari to the U.S. Court of Appeals for the D.C. Circuit and for such further relief as the court deems necessary and proper. Respectfully submitted:

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No.

United States Supreme Court

October Term, 1997

T. CARLTON RICHARDSON,
Petitioner,

vs.

DISTRICT OF COLUMBIA COURT OF APPEALS, et. al.
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
to the
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

APPENDIX

T. CARLTON RICHARDSON
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APPENDIX TO WRIT OF CERTIORARI

Table of Contents

Page

I. Relevant Decisions

Order, T. Carlton Richardson v. District of Columbia Court of Appeals, et al.... 1
No. 97-7085 (D.C. Cir., 12/09/97)

Memorandum Opinion, T. Carlton Richardson v. District of Columbia Court of Appeals, et al., ... 3
No. 96-02535, 962 F. Supp. 1 (D.C. D.C., 03/27/97)

Order, Id. (Sporkin, J., 03/27/97)..... 6

II. Other Documents

Complaint for Violation of Civil Rights and Injunctive Relief, Id. (11/06-/96) [Exhibits Omitted]..... 7

U.S. COURT OF APPEALS FOR D.C. CIRCUIT

T. CARLTON RICHARDSON,)

Appellant,)

vs.) No. 97-7085

D.C. COURT OF APPEALS, et al.) FILED: 12/09/97

)

Appellees.)

BEFORE: Ginsburg, Sentelle, and Henderson, Circuit Judges

O R D E R

Upon consideration of the motions for summary affirmance, the response thereto, and the replies, it is

ORDERED that the motions for summary affirmance be granted substantially for the reasons stated by the district court in its order filed March 27, 1997. Because appellant essentially seeks review of decisions of the District of Columbia Court of Appeals, and his general constitutional challenge to that court's rule is inextricably intertwined with those decisions, the district court correctly found jurisdiction lacking. See Richardson v. District of Columbia Court of Appeals, 83 F.3d 1513 (D.C. Cir., 1996); see also Stanton v. District of Columbia Court of Appeals No. 96-7041, 1997 WL 637610 (D.C. Cir. Oct. 17, 1997); Levin v. Attorney Registration and Disciplinary Comm'n of the Supreme Court of Ill., 74 F.2d 763, cert. denied 116 S.Ct 2553 (1996). The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627

F.2d 541, 545 (D.C. Cir.) (per curium), cert. denied, 449 U.S. 994 (1980)

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 41

Per Curiam

U.S. DISTRICT COURT FOR D.C.

T. CARLTON RICHARDSON,)

Plaintiff,)

vs.) CA No. 96-02535 (SS)

D.C. COURT OF APPEALS, et al.) FILED: 03/27/97

Defendants.)

MEMORANDUM OPINION

This matter is before the Court on Defendants' motions to dismiss and Plaintiff's opposition thereto. The Court heard oral argument on this matter on February 21, 1997.

Plaintiff, pro se, challenges on Constitutional grounds his March 12, 1996 temporary suspension for the District of Columbia bar. Plaintiff was suspended following his resignation from the Florida Bar,1/ pursuant to D.C. App. Rule XI, Sec. 11 (d), which provides for temporary suspension in the District of Columbia upon notice to the D.C. Court of Appeals that an attorney has been suspended from another state's bar. Plaintiff contends that he s[h]ould not have been suspended in the District of Columbia because he resigned in Florida. He claims he was denied due process under the Fourteenth Amendment because the D.C. Court of Appeals did not give him a hearing on this issue before temporarily

1—Plaintiff voluntarily resigned from the Florida [B]ar following allegations that he had engaged in misconduct.

suspending him. He seeks injunctive and monetary relief.

Plaintiff previously challenged the constitutionality of his temporary suspension before Judge Hogan in Case No. 95-CV-1272. Judge Hogan dismissed Plaintiff's claim because federal district courts lack jurisdiction to hear challenges to the attorney disciplinary proceedings of state courts. Judge Hogan's decision was affirmed by the D.C. Circuit in Richardson v. District of Columbia Court of Appeals, 83 F.3d 1513 (D.C. Cir., 1996).

Plaintiff has not distinguished this case from the suit he brought before Judge Hogan. The D.C. Circuit was clear in that case:

> Richardson's attacks on Sec. 11(d)'s constitutionality ... are not merely intertwined with his attack on the decision to suspend him but are one and the same — namely, that application of Sec. 11(d)'s procedures (or lack of procedures) deprives him of his liberty interest in the practice of law without due process. His attack on the rule cannot be contemplated without his attack on his suspension.

Id. at 1515-16. The decision to temporarily suspend the Plaintiff was a final judgment of the D.C. Court of Appeals. Id. at 1514-15 This Court cannot review the constitutionality of the underlying D.C. Bar rule if the net effect is to reverse that final judgment. Id. at 1514-16. Plaintiff can attack that decision by seeking certiorari to the United States Supreme Court. Id. at 1515 2/

2—Even if this Court were to reach the substantive question of Plaintiff's due process rights, it is

It is clear to the Court that Plaintiff is trying to get, at the very least, a second bite at the apple. Having previously been rebuffed by Judge Hogan and the D.C. Circuit, Plaintiff has attempted to bring the same action again. Plaintiff, like many pro se litigants, feels very passionate about his cause, as was demonstrated by his "vigorous" performance at oral argument. Nevertheless, this Court has broad powers under Fed. R. Civ. Pro. 11 to sanction an attorney or party who abuses the process by bringing frivolous or repetitive litigation. If Plaintiff's ultimate goal is to be reinstated as an attorney in the District of Columbia or elsewhere, he would do well to think hard before filing another suit such as this one.

The Court will grant Defendants' motions for summary judgment. An appropriate order follows this opinion.

3/26/97
Date

/s/
Stanley Sporkin
United States District Judge

---

not apparent, based on Plaintiff's own representations, how his due process rights were violated. Although Plaintiff did not appear in person before the D.C. Court of Appeals before the temporary suspension was first initiated, he was given notice and did respond to that notice in writing. It was the opportunity to respond in writing that constituted Plaintiff's due process. He was granted further due process when he appeared before the D.C. Court of Appeals for a post-deprivation hearing.

U.S. DISTRICT COURT FOR D.C.

T. CARLTON RICHARDSON,	)	
Plaintiff,	)	
vs.	)	CA No. 96-02535 (SS)
D.C. COURT OF APPEALS, et al.	)	FILED: 03/27/97
Defendants.	)	

ORDER

This matter is before the Court on Defendants' motions to dismiss and Plaintiff's opposition thereto. For the reasons stated in the attached Memorandum Opinion, it is hereby

ORDERED that Defendants' motions for summary judgment be GRANTED; and it is further

ORDERED that this case be DISMISSED.

3/26/97
Date

/s/
Stanley Sporkin
United States District
Judge

NOTE: Exhibits are omitted.

U.S. DISTRICT COURT FOR D.C.

T. CARLTON RICHARDSON,	)	
Plaintiff,	)	
vs.	)	CA No. 96-02535 (SS)
D.C. COURT OF APPEALS, et al. ["DCCA"]	)	FILED: 11/06/96
Defendants.	)	

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
AND INJUNCTIVE RELIEF
(Verified)

[JURY DEMAND]

This Complaint states a cause of action for violation of civil rights guaranteed to citizens of the United States from invasion by state action or private individuals under the Privilege and Immunities Clause of the 14th Amendment of the U.S. Constitution and the Due Process and Equal Protection Clauses of said Amendment as incorporated into the Privilege and Immunities Clause.

Parties

1. That the Plaintiff, T. CARLTON RICHARDSON, is a citizen of the United States who resides in the District of Columbia; that the DISTRICT OF COLUMBIA COURT OF APPEALS, is a division of the District of Columbia Government which regulates the practice of law in said ... jurisdiction by virtue of D.C. Code Sec. 11-2501, et seq. [See, Appendix at 10 ("Appx. ___")]; that the BOARD ON PROFESSIONAL

RESPONSIBILITY ["BPR"] is an agency of the defendant DCCA which administers the disciplinary regulations governing attorneys promulgated by said defendant DCCA; that LEONARD H. BECKER is an employee of said Government in the position of District of Columbia Bar Counsel, the prosecutorial arm of the BPR; and DONNA M. DeSILVA is an employee of said Government in the position of Assistant District of Columbia Bar Counsel.

Jurisdiction

2. That the jurisdiction of the court lies in the Privilege and Immunities Clause of the 14th Amendment of the U.S. Constitution, which is self-executing, 42 U.S.C. Sec. 1983 [deprivation of rights by "(a)ny person ... under color of" state law, custom, or usage], 28 U.S.C. 1331 giving the court "original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States", 42 U.S.C. Sec. 1343(a)(3) for deprivation of civil rights and Sec. 1343(a)(4) to recover damages or obtain equitable relief under congressional civil rights acts.

3. That jurisdiction also exists under 42 U.S.C. Sec. 1983 since plaintiff alleges actions by officials of the District of Columbia Government and 42 U.S.C. Sec. 1988 for proceedings in vindication of civil rights and attorney fees.

Statement of Claim

4. That the plaintiff was duly licensed to practice law in the District of Columbia by the defendant DCCA in 1974.

5. That at various times on five (5) occasions between 1991 and 1996 [See, Exhibit "A" (composite): Copies of Temporary Suspension Orders, Appx. 1) the defendants did wrongfully deprive the plaintiff of his license to practice law under D.C. Bar Rule XI,

Sec. 11(d) which, provides:

> "Temporary suspension ... Upon receipt of a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of this Court has been suspended or disbarred by a disciplining court outside the District of Columbia, the Court shall forthwith enter an order suspending the attorney from the practice of law in the District of Columbia pending final disposition of any reciprocal disciplinary proceedings ... " (Emphasis supplied) See, Exhibit "B": Copy of D.C. Bar Rule XI, Sec. 11(d), Appx. 8.

3. [6.] That this disciplinary regulation was promulgated and is being enforced in violation of the Constitutional requirement that no state shall deprive a person of due process under or equal protection of its laws as incorporated in the Privilege and Immunities Clause of the U.S. Constitution and in violation of the expressed Congressional mandate that:

> "Except [upon conviction of an offense involving moral turpitude], a member of the bar may not be ... suspended ... under [Chapter 25. Attorneys] until written charges, under oath, against him have been presented to the court, stating distinctly the grounds of complaint. The court ... shall fix a time for hearing thereon. Thereupon a certified copy of the charges and order shall be served upon the member personally, or if it is established to the satisfaction of the court that personal service cannot be had, a certified copy of the charges and order shall be served upon him by mail,

publication, or otherwise as the court directs." See, Exhibit "C": D.C. Code, Chapter 25, Appx. 10

4. [7.] That the plaintiff was temporarily suspended pursuant to D.C. Bar Rule XI, Sec. 11(d) from the practice of law without providing an pre-suspension hearing on all relevant occasions in violation of his rights under the Due Process and Equal Protection Clauses of the U.S. Constitution as incorporated into the Privilege and Immunities Clause of said Constitution;

5. [8.] That the plaintiff was also temporarily suspended from the practice of law pursuant to D.C. Bar Rule XI, Sec. 11(d) on all relevant occasions without following the mandatory requirements provided under D.C. Code Sec. 11-2503, that is, without "written charges, under oath" and personal, alternative or substituted service of said charges upon the plaintiff.

6. [9.] That the plaintiff, on one occasion, was temporarily suspended form the practice of law pursuant to D.c. Bar Rule XI, Sec. 11(d) for petitioning [for] leave to resign the Florida Bar while disciplinary proceedings were pending, which was granted by the Supreme Court of Florida in August, 1992 without a finding of any misconduct. Such a temporary suspension is not expressly provided for in said Bar Rule and therefore constituted a violation of plaintiff's due process rights.

7. [10.] That under none of the temporary suspensions was the plaintiff accorded a hearing before or after the termination of the temporary suspensions, although requested. This occurred on at least one occasion when the plaintiff raised constitutional challenges to the said Bar Rule.

8. [11.] That the defendants continue to

prosecute or threaten to prosecute the plaintiff and other members of the District of Columbia Bar under D.C. Bar Rule XI [Sec. 11](d) which is unconstitutional both on its face and as applied. See, Exhibit "D": Copy of Letter, defendant DeSilva to Garland Pinkston, Esq., Clerk, DCCA (05/10/96), Appx. 12

9. [12.] That the plaintiff's law license deprivation under D.C. Bar Rule XI, Sec. 11(d) was different from the temporary suspension procedure for D.C. Bar members who are "causing great harm" under D.C. Bar Rule XI, Sec. 3(c). Those Bar members subjected to temporary suspension under Sec. 3(c) are allowed to continue to practice regarding existing cases prior to the temporary suspension which is instituted after charges are brought under oath by the BPR before the DCCA. This disparate treatment between Sec. 11(d) [reciprocally disciplined] attorneys and Sec. 3(c) [domicilary disciplined] attorneys denies the former equal protection of the laws guaranteed by the 14th Amendment, See, Exhibit "E": Copy of the D.C. Bar Rule XI, Sec. 3(c), Appx. 15

10. [13.] That the defendants knew or should have known that their actions under D.C. Bar Rule XI, Sec. 11(d), whether in promulgation or enforcement, which has been, is and may be used to temporarily suspend the plaintiff or other Bar members similarly situated were unconstitutional and in violation of the plaintiff's civil rights guaranteed under the Constitution or Congressional Civil Rights Laws.

11. [14.] That the unconstitutional temporary deprivations of plaintiff's law license caused the loss to plaintiff of existing and prospective business or business advantages and/or economic interests and, furthermore, caused the plaintiff to suffer mental pain and anguish.

Relief Requested

Wherefore, plaintiff request (1) that the court conduct a trial by jury as to the issues of fact and damages, (2) that compensatory and pain and suffering damages be awarded the plaintiff against the defendants, jointly and severally, in the amount of 1.5 Million Dollars (One and One-Half Million), (3) that punitive damages be awarded in the amount of at least $750,000 (Seven Hundred Fifty Thousand Dollars), (4) that plaintiff be allowed attorney fees and costs allowed by statute, (5) that the defendants be enjoined from enforcing D.C. Bar Rule XI, Sec. 11(d) or otherwise suspending, temporarily or permanently, members of the D.C. Bar without following the mandatory requirements of D.C. Code, Chapter 25 and/or providing notice and an opportunity to be heard, and (6) that any further relief that the court deems necessary and proper be granted.

Verification

This certifies under penalties of law that the facts alleged herein are true to the best of plaintiff's information, knowledge and belief.

/s/_____
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